

# EXHIBIT 107

Salem, OR

Page 1

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

-----X  
IN RE: PHARMACEUTICAL INDUSTRY ) MDL No. 1456  
AVERAGE WHOLESALE PRICE ) Civil Action No.  
LITIGATION ) 01-12257-PBS  
-----X

THIS DOCUMENT RELATES TO: ) Hon. Patti B.  
United States of America ex rel. ) Saris  
Ven-A-Care of the Florida Keys, )  
Inc. v. Dey, Inc., et al., Civil )  
Action No. 05-11084-PBS; and )  
United States of America ex rel. )  
Ven-A-Care of the Florida Keys, )  
Inc. v. Boehringer Ingelheim )  
Corp., et al., Civil Action No. )  
07-10248-PBS )  
-----X

VIDEOTAPED DEPOSITION OF THE OREGON DEPARTMENT  
OF HUMAN SERVICES by KATHY KETCHUM  
PURSUANT TO FEDERAL RULE 30(B)(6)  
MONDAY, DECEMBER 15, 2008

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Page 2	Page 4
<p>1 BE IT REMEMBERED THAT, pursuant to Rule</p> <p>2 30(b)(6) of the Federal Rules of Civil Procedure,</p> <p>3 the deposition of THE OREGON DEPARTMENT OF HUMAN</p> <p>4 SERVICES by KATHY KETCHUM was taken before</p> <p>5 Marilyn T. Hoover, a Certified Shorthand Reporter</p> <p>6 in Oregon, Washington, and California; on Monday,</p> <p>7 December 15, 2008, commencing at the hour of 10:12</p> <p>8 A.M.; at the Phoenix Grand Hotel, 201 Liberty Street</p> <p>9 S.E., in Salem, Oregon.</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>1 A P P E A R A N C E S</p> <p>2</p> <p>3 On behalf of Oregon Department of Human Services</p> <p>4 Division of Medical Assistance Programs</p> <p>5</p> <p>6 OREGON DEPARTMENT OF JUSTICE</p> <p>7 BY MR. JESSE DAVIS, ESQ.</p> <p>8 1162 Court Street N.E.</p> <p>9 Salem, Oregon 97301</p> <p>10 Telephone: 503-947-4540</p> <p>11</p> <p>12</p> <p>13 On behalf of Dey defendants</p> <p>14</p> <p>15 KELLEY DRYE &amp; WARREN, LLP</p> <p>16 BY MR. MICHAEL J. MALONEY, ESQ.</p> <p>17 101 Park Avenue</p> <p>18 New York, New York 10178</p> <p>19 Telephone: 212-808-7706</p> <p>20</p> <p>21</p> <p>22 (CONTINUED)</p>
Page 3	Page 5
<p>1 A P P E A R A N C E S</p> <p>2</p> <p>3 On behalf of relator</p> <p>4</p> <p>5 BERGER MONTAGUE, P.C.</p> <p>6 BY MS. SUSAN SCHNEIDER THOMAS, ESQ.</p> <p>7 1622 Locust Street</p> <p>8 Philadelphia, Pennsylvania 19103</p> <p>9 Telephone: 800-424-6690</p> <p>10</p> <p>11</p> <p>12 On behalf of Boehringer defendants</p> <p>13</p> <p>14 KIRKLAND &amp; ELLIS, LLP</p> <p>15 BY MR. JORDAN HEINZ, ESQ.</p> <p>16 200 East Randolph Drive</p> <p>17 Chicago, Illinois 60601</p> <p>18 Telephone: 312-861-2000</p> <p>19</p> <p>20</p> <p>21</p> <p>22 (CONTINUED)</p>	<p>1 A P P E A R A N C E S</p> <p>2</p> <p>3 On behalf of Abbott Laboratories and Pap</p> <p>4 Pharmaceutical Products</p> <p>5</p> <p>6 JONES DAY</p> <p>7 BY MS. ANDREA L. CARON, ESQ. (via telephone)</p> <p>8 77 West Wacker</p> <p>9 Chicago, Illinois 60601</p> <p>10 Telephone: 312-269-4218</p> <p>11</p> <p>12</p> <p>13 ALSO PRESENT:</p> <p>14</p> <p>15 Mr. Brian Neubauer, videographer</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>

2 (Pages 2 to 5)

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## Salem, OR

Page 6				Page 8			
1	INDEX			1	PLAINTIFF'S EXHIBITS		
2				2	NUMBER	DESCRIPTION	PAGE
3	WITNESS: KATHY KETCHUM		PAGE	3	Exhibit Plaintiffs-OR 001 - Oregon draft		
4	Examination by Mr. Heinz.....	011, 280		4		Medicaid pharmacy	
5	Examination by Mr. Maloney.....	225, 281		5		reimbursement	
6	Examination by Ms. Schneider Thomas.....	237		6		methodology.....	240
7	Examination by Ms. Caron.....	298		7			
8				8	DEY EXHIBITS		
9				9	NUMBER	DESCRIPTION	PAGE
10	ROXANE EXHIBITS			10	Exhibit Dey 724 - OIG report entitled		
11	NUMBER	DESCRIPTION	PAGE	11		"Medicare reimbursement of	
12	Exhibit Roxane-OR 001 - Subpoena.....	017		12		albuterol".....	290
13	Exhibit Roxane-OR 002 - 42 CFR section 447.204.	041		13	Exhibit Dey 725 - OIG report entitled "Update:		
14	Exhibit Roxane-OR 003 - ORHC159 - 168.....	060		14		Excessive Medicare	
15	Exhibit Roxane-OR 004 - OR_HC_00000001 - 009...	064		15		reimbursement for albuterol".	292
16	Exhibit Roxane-OR 005 - HHC020-0515 - 0523.....	068		16	Exhibit Dey 726 - OIG report entitled		
17	Exhibit Roxane-OR 006 - HHC020-0511 - 0514.....	091		17		"excessive Medicare	
18	Exhibit Roxane-OR 007 - HHC020-0494 - 0495.....	112		18		reimbursement for albuterol".	293
19	Exhibit Roxane-OR 008 - HHC020-0345 - 0346.....	131		19			
20	Exhibit Roxane-OR 009 - Designations for			20	ABBOTT EXHIBITS		
21	testimony.....	143		21	NUMBER	DESCRIPTION	PAGE
22	Exhibit Roxane-OR 010 - HHC020-0295 - 0296.....	143		22	Exhibit Abbott-OR 001 - HHC020-0712 - 0714..... 300		

Page 7				Page 9			
1	ROXANE EXHIBITS (CONTINUED)			1	MONDAY, DECEMBER 15, 2008; SALEM, OREGON		
2	NUMBER	DESCRIPTION	PAGE	2			
3	Exhibit Roxane-OR 011 - HHD127-0403 - 0406.....	150		3			
4	Exhibit Roxane-OR 012 - Grant Thornton Survey..	171		4	THE VIDEOGRAPHER: My name is Brian		
5	Exhibit Roxane-OR 013 - Document provided by			5	Neubauer. I am representing Henderson Legal		
6	counsel December 11th			6	Services. This is the case of Pharmaceutical		
7	pursuant to subpoena...	175		7	Industry Average Wholesale Price Litigation. The		
8	Exhibit Roxane-OR 014 - HHC020-0431 - 0433.....	182		8	deponent is Kathy Ketchum.		
9	Exhibit Roxane-OR 015 - HHC020-0434.....	190		9	Will the court reporter please swear in		
10	Exhibit Roxane-OR 016 - Federal Register, Vol.			10	the witness.		
11	52, No. 147, Pages			11	(Witness sworn.)		
12	28657 - 28658.....	198		12	MR. HEINZ: I'll go ahead and start the		
13	Exhibit Roxane-OR 017 - 42-CFR Section 447.512			13	introductions just around the table. I'm Jordan		
14	effective Oct. 1, 2007.	198		14	Heinz from Kirkland and Ellis, on behalf of the		
15	Exhibit Roxane-OR 018 - HHD021-0076 - 0114.....	208		15	Boehringer defendants.		
16	Exhibit Roxane-OR 019 - OIG management advisory			16	MR. MALONEY: Michael Maloney with		
17	report dated September			17	Kelley Drye & Warren, on behalf of Dey Inc., Dey		
18	29th, 1989.....	215		18	LP Inc., and Dey LP.		
19				19	MR. DAVIS: Jesse Davis from the Oregon		
20				20	Department of Justice, on behalf of the Oregon		
21				21	Department of Human Services, Division of Medical		
22	(CONTINUED)			22	Assistance Programs.		

3 (Pages 6 to 9)

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## Salem, OR

Page 206	Page 208
<p>1 aggregate" language in this regulation, as you</p> <p>2 read it, would you interpret this regulation to</p> <p>3 mean that Oregon Medicaid can pay above its</p> <p>4 estimated acquisition cost on some drugs and</p> <p>5 below on others, such that, in the aggregate,</p> <p>6 it's not paying above estimated acquisition costs</p> <p>7 as a whole?</p> <p>8 A. That is how --</p> <p>9 MS. SCHNEIDER THOMAS: Objection, form.</p> <p>10 THE WITNESS: That is how I understand</p> <p>11 the regulation to be interpreted.</p> <p>12 MS. SCHNEIDER THOMAS: Bless you.</p> <p>13 MR. MALONEY: Thanks.</p> <p>14 Q. BY MR. HEINZ: So it's contemplated</p> <p>15 under the federal regulations that Oregon</p> <p>16 Medicaid may pay more to pharmacies than its --</p> <p>17 than Oregon Medicaid's estimated acquisition cost</p> <p>18 for some drugs?</p> <p>19 A. For some drugs, as long as the</p> <p>20 aggregate is not exceeded.</p> <p>21 Q. And going back to the prior documents</p> <p>22 that we've looked at today, Ms. Ketchum, you'll</p>	<p>1 pharmacies, on average, acquire drugs at AWP</p> <p>2 minus roughly 66 percent; correct?</p> <p>3 A. Generic drugs, yes.</p> <p>4 Q. And you're also aware that Oregon</p> <p>5 Medicaid's reimbursement for those drugs was much</p> <p>6 higher at AWP minus between 11 and 15 percent;</p> <p>7 correct?</p> <p>8 MS. SCHNEIDER THOMAS: Objection, form.</p> <p>9 THE WITNESS: AWP minus 15 percent was</p> <p>10 only one of the reimbursement factors that</p> <p>11 established estimated acquisition cost. They</p> <p>12 also use SMAC, and FUL, and usual and customary.</p> <p>13 Q. BY MR. HEINZ: All right. We're almost</p> <p>14 finished with my line of questioning, Ms.</p> <p>15 Ketchum. I just have a couple of more questions</p> <p>16 for you, and then we'll wrap up.</p> <p>17 I'd like to mark as Roxane Exhibit 18 a</p> <p>18 document bearing the Bates numbers HHD021-0076</p> <p>19 through 0114.</p> <p>20 (Exhibit Roxane-OR 018 marked.)</p> <p>21 Q. BY MR. HEINZ: Ms. Ketchum, have you</p> <p>22 seen this document that we've marked as Roxane</p>
Page 207	Page 209
<p>1 agree with me that Oregon Medicaid was in</p> <p>2 possession of information that generic drugs are</p> <p>3 purchased by pharmacies at substantially less</p> <p>4 than AWP minus 15 percent?</p> <p>5 MS. SCHNEIDER THOMAS: Objection, form.</p> <p>6 THE WITNESS: I -- I can testify that</p> <p>7 there were reports that, on average, generic</p> <p>8 drugs were purchased at less than AWP minus 15.</p> <p>9 Q. BY MR. HEINZ: And so do you have any</p> <p>10 understanding as to Oregon Medicaid's decision to</p> <p>11 reimburse at a higher reimbursement rate of, say,</p> <p>12 AWP minus 15 percent because, in the aggregate,</p> <p>13 it was still complying with the federal</p> <p>14 regulation that we've just been discussing?</p> <p>15 MS. SCHNEIDER THOMAS: Objection, form.</p> <p>16 THE WITNESS: I'm not making the</p> <p>17 connection. I need to understand your question</p> <p>18 better.</p> <p>19 Q. BY MR. HEINZ: Sure. And let me break</p> <p>20 it out a little bit.</p> <p>21 You understand that Oregon Medicaid was</p> <p>22 in possession of reports that demonstrated that</p>	<p>1 Exhibit 18?</p> <p>2 A. I don't recall seeing it before.</p> <p>3 Q. In looking at the cover page to the</p> <p>4 Exhibit 18, it appears to be a report from the</p> <p>5 Office of Inspector General Office of Audit;</p> <p>6 correct?</p> <p>7 A. Yes.</p> <p>8 Q. I'd like you to turn to page 2 of this</p> <p>9 document. It says 2 at the bottom; so it's page</p> <p>10 2 of the document, not page 2 of the exhibit.</p> <p>11 A. Okay.</p> <p>12 Q. And you'll see under "scope of audit"</p> <p>13 that it reads: "The primary objective of our</p> <p>14 review was to determine the effectiveness of</p> <p>15 HCFA's present EAC requirements in limiting</p> <p>16 reimbursement for prescription drugs to</p> <p>17 reasonable levels." Do you see that?</p> <p>18 A. That is what it says, yes.</p> <p>19 Q. And it notes in the second paragraph,</p> <p>20 last sentence, that "the second phase of our</p> <p>21 review, we performed additional fieldwork in five</p> <p>22 other states: Massachusetts, North Carolina,</p>

53 (Pages 206 to 209)

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